



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 28.

JUAN PEDRO CAMOU, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

REPLY BRIEF OF APPELLANT.

Counsel for the Government says in the last paragraph of his brief that this grant should be rejected "on the broader ground that it has not been lawfully and regularly derived from the government of Spain and Mexico or from any of the States of the Republic of Mexico having lawful authority to make grants of lands." This is the main objection. The one of supposed non-location of the grant seems not to be of much importance, as the grant itself states that after the survey and before the sale the grantee "took possession of the land so segregated" by the survey, "being informed that at the proper time he had to mark all its limits with monuments of stone and mortar, as is by law provided."

As to the authority of the State to make this grant, we respectfully call the notice of the Court to some laws and evidence not contained in our main brief.

On May 9, 1825, the congress or legislature of the State of Sonora passed a resolution set out in the following document:

Translation of Document in the Archives of the Government of Sonora, at Hermosillo, Sonora.

“OFFICE OF THE SECRETARY
OF THE STATE CONGRESS.

“MOST EXCELLENT SIR: Based upon the law concerning the classification of federal revenues, and upon subsequent data, the honorable congress in article 47 of the decree No. 23 declares that the right to issue confirmations of lands is one of the revenues of the State. The regulation of that branch was a consequence of this declaration. While this regulation was under advisement, the observations arrived which the commissary general makes in his letter of the 26th of the past month, and which Your Excellency had the kindness to transmit to us together with another letter of the 21st of the same month. They refer to those presented under date of December 13, in which said chief officer expresses doubts as to whom the proceeds of the sale belong, and about which he consulted from that time forward the general government. The decision for which he asks has not yet come, and the honorable congress has waited three months for it, a sufficient time for it to have arrived. This silence alone, without there being any need for other reasons, which might here be alleged, confirm the opinion and convey the conviction that the said right of confirming land titles belongs to the State and the harm which might result to the State in the present depletion of its treasury, by keeping this branch in a state of paralysis, was another motive towards the issuance of the said declaration.

“Done in today's session of the honorable congress and so communicated to Your Excellency, in order that you may transmit this resolution to the aforementioned commissary general, who shall at the same time be notified that, if after the usual procedure in such cases, it should be declared that the branch of public lands did not form a part of the State

revenues, the national treasury is to be reimbursed in the amounts collected by the treasury of the State. By this order your letter of the 27th of last April is now answered. May God have you in his keeping many years.

"FUERTO, May 9, 1825.

"TOMAS ESCALANTE, *Deputy Secretary.*

"JOSE DE JESUS ALMADA, [RUBRICAS.]

"*Deputy Secretary.*"

Here is proof that some time earlier than May 9, 1825, Sonora was claiming to own the vacant lands in her limits, basing this claim on article 11 of the law of August 4, 1824. This is the source of her authority, as habitually claimed by her officers and acquiesced in by the Mexican nation for the succeeding twenty-eight years.

The document shows, moreover, that this claim of ownership was specifically brought for a decision before the general government of Mexico.

As the Sonora legislature pointedly observed, the prolonged silence of the General Government amounted to a sanction of such claim.

There are other documents fully as strong as the foregoing. We submit the following from the official records at Hermosillo :

"(Seal.) Republic of Mexico, treasurer general of the State of Sonora. Two cancelled stamps of fifty cents each.

"VICTOR AGUILAR,

"*Treasurer General of the State of Sonora, Republic of Mexico :*

"I certify that in the expediente of the San Jose del Carrizo, issued in the year 1825, there exists on the last page an entry as follows :

"JOSE MARIA MENDOZA,

"*Comisario of the Treasury of Arispe, in the State of Sonora and Sinaloa :*

"I certify that on page 23 of the Book of Debits and

Credits (cargo y data) for the current fiscal year there exists the following entry: May 2. Sale of public lands forty-eight dollars, two reales, seven grains, paid in by Don Jose Antonio Garcia, a resident within the jurisdiction of Rio Chico, in these words: forty-two dollars for the original valuation at which the said lands were sold at public auction by the comisario general of this State on the 9th day of December, 1824, being two and a quarter sitios of land which were surveyed by the Federation on and since the 18th day of January, 1823, for the raising of cattle and horses, at the place called San Jose del Carrizo, situate within the said jurisdiction, in the district of Hostimuri: two dollars, three reales, ten grains, as the half-yearly tax with the customary eighteen per cent; six reales, two grains, for the two per cent, due the general fund, and the remaining three dollars for the fees of the extinguished auditor's office (contaduria del Ramo); charges which have been invariably made on all the sales of public lands like the one of which this document speaks, on account of the treasury of the Federation, prior to the classification and delivery of revenues, which law went into force in this State on the 1st day of November, 1824, since which date the revenue from lands denounced, surveyed, bounded, auctioned and possessed prior to the said first day of November has been considered one of the revenues comprised in article 12 of said law. It is to be observed that the interested party, Don Jose Antonio Garcia, at the time of making said payment, of which a receipt was given him for his protection, stated that the cause of the delay was caused only by employing a man who did not comply with his duty in time, although he had been employed ever since the year 1825. This is a true extract of the original order in the matter, called for under order No. 14. \$048.2.7.

“MENDOZA.
“JOSE ANTONIO GARCIA.”

“And to whom it may concern. This is given in Arispé on 2nd day of May, one thousand, eight hundred and thirty-one.

“JOSE MARIA MENDOZA. [RUBRIC.]”

“Given in the city of Hermosillo, on the twenty-fourth day of the month of April, one thousand eight hundred ninety-four.

“V. AGUILAR.”

"(Seal.) Republic of Mexico, treasurer general of the State of Sonora. Two cancelled stamps of fifty cents each.

"**VICTOR AGUILAR,**
"Treasurer General of the State of Sonora, Republic of Mexico :

"I certify that in the expediente of San Rafael de Juriquipa, issued in the year 1824, there exists on the last page an entry as follows:

"**JOSE MARIA MENDOZA,**
"Comisario of the Section of the Treasury of Arispe, in the State of Sonora :

"I certify that on page 31 of the Book of Debits and Credits (cargo y data) for the current fiscal year there exists the following entry: June 16. Sale of public lands, thirty-five dollars, three reales, paid in by Da. Maria Gregorio Finoco, widow of D. Juan Lafarga, in these words: Thirty dollars for the original valuation at which was sold at public auction by the commissary general of the State on December 9, 1824, in favor of said Lafargo, a sitio of land for the raising of cattle, embraced in the place called San Rafael de Juriquipa, situate within the jurisdiction of the pueblo of Oputo and in the district of this city; being six reales, two grains as the half-yearly tax with the customary eighteen per cent.; four reales, ten grains for the two per cent. due the general fund, and the remaining three dollars for the fees of the extinguished auditor's office (contaduria del Ramo), ordered to be added to the general treasury fund, which have always been charged in all the sales of vacant public lands made by the public treasury, for their survey, measurement, appraisement and auction before the classifications of revenues. It is to be noted that the interested party when making this payment, of which I gave her a receipt, declared that she could not make such payment until now, because her husband had died leaving a family of minor children, and she was put to great hardship to provide for them. This is a true extract of the original order of the commissary in the matter which accompanies order number 22, \$35.3. And to whom it may concern: This is

given in Arispe on the 16th day of June, one thousand eight hundred and thirty-one.

" JOSE MARIA MENDOZA. [RUBRIC.]"

" Given in the city of Hermosillo on the 24th day of the month of April, one thousand, eight hundred and ninety-four.

" V. AGUILAR."

Here the commissary general, who had in 1825 communicated to the General Government, of which he was a chief officer, the assertion of the claim of Sonora, six years afterwards declares in express terms the law to be that such claim is valid. After the law of the classification of revenues went into effect the General Government, which theretofore had been taking the revenues from sales of public lands, conceded that further revenues from such lands belonged to Sonora, and in fact the General Government ceased collecting such revenues, and the State sold lands as the Federation had done before this law went into effect.

The statement does not seem too strong that it would not be possible to find a clearer exposition of the meaning of the law of August 4, 1824.

The report made by the Government agents of the condition of the archives or records of land grants in Arizona and similar grants in Mexico affords the most ample proof, both that the actions of the State officials were known to the Federal officers and that such actions were regarded as lawful. For instance, one case out of many is the following:

" 102. Canada del Valle de Sonora.

" The original expediente is in the archives. The proceedings begin February 21, 1830, with petition of Francisco Duran to Treasurer General Gaxiola. Payment made March 31, 1830.

" Nothing further done until January 20, 1837, when Duran petitioned the treasurer general for title.

" An endorsement over the signature of Treasurer General Milla states that final title was issued April 21, 1837.

"The book of Toma de Razon for 1837 is in the archives, and contains an entry of this title on page 2 of leaf 44."

Here it appears that the lands were sold by the State officials and payment made to such State authorities on March 31, 1830. Afterwards application for final title was made to the treasurer general at the time when Sonora was a department and the treasurer general was a federal officer, under the obligation to report to the General Government. A fee was due on the issue of this final title which went to the revenues of the department. A fuller recognition than this by the General Government of the validity of the sale made by the State could not well be suggested.

It is submitted that the proof is irresistible that State grants made at the time of the one in this case were made with the "express order and sanction of the general powers." The express order is found in article 11 of the law of August 4, 1824, and the sanction is shown by direct approval, as well as by the acquiescence of the government with full knowledge of all the facts. Such grants are therefore not embraced within the Santa Anna decree.

Counsel states in his brief that no "so-called attorney general of the Mexican nation ever pronounced one of these titles good and valid."

It is submitted that the government's own report shows otherwise. For instance, in grant No. 107 the proceedings begin with petition to State Treasurer General Mendoza April 1, 1835. Reference to attorney general, March 8, 1837. Payment, May 17, 1837, and final title issued on same day. On March 8, 1837, Sonora was a department and the attorney general was a Mexican (Federal) attorney general under the central system, and he, as such officer of the General Government, must have approved the prior proceedings or the sale would not have been made. Mendoza, who acted as an officer of the department in signing the endorsement that final title was issued, had previously been a State official. He was an officer of the highest standing,

having served under the several forms of government from prior to the revolution to 1840 (Official Report, p. 95). He presumably would know his own laws, as he was at one time promotor fiscal or attorney general. He never questioned the validity of the actions of the State. On the contrary, he gave such proceedings his express sanction.

The official report of the government shows (pp. 83, 87) that on February 23, 1839, Mendoza, who was then superior chief of the treasury, sent to his superior officer a communication which was laid before the President in person. This communication shows both that the laws of the old State of Sonora were known, because they were specifically enumerated, and also that the department was selling lands as the State had done. No reference is made to any colonization laws.

The record in this case shows, at page 199, that the honorable congress of the Mexican nation had been communicated with regarding these very grants. We submit this as actual knowledge on the part of the general powers.

Location of this Grant.

The record of the survey shows (Rec., p. 107) that the west center monument "ended upon the same valley fronting the Huachuca mountains." The map shows that these mountains run northeast and southwest, and are almost wholly in the United States, only the very smallest part extending across the international boundary line into Mexico. The center of the west line of the grant is therefore forever fixed in the United States. The center monument of the east line "ended upon the valley and fronting the Mule mountains, "which mountains (see testimony of Flipper, Rec., p. 73) do not cross the boundary line into Mexico." This monument is therefore also unquestionably located in the United States, and the central or initial point of the grant

is in a straight line between the west center and the east center monuments, and therefore located beyond question of removal. We submit that the whole tract is identified too clearly to admit of valid criticism. The petition, as shown, was not for a specific quantity, but for a tract, and the tract was surveyed and the grantee took possession of the land so segregated by the survey. The excess over four sitios is only slight in view of the crude means of surveying and the roughness of the country.

At page 104 of the official report of the Government is quoted the law of Sonora of May 12, 1835, which provides that those are holders in good faith (art. 2) "who, under the boundaries set out in their proceedings of survey, occupy any overplus of lands, to which they are always entitled, even when the overplus is shown, without other obligation than to pay for the excess according to the quality of the land and at the price that governed when it was surveyed and appraised."

The delivery of official or juridical possession of the lands so segregated by this survey is conclusive of the boundaries and extent of the tract granted under the well-settled rules applicable to delivery of juridical possession as set out in the many cases in which that question has been passed on by this Court. In addition to the fact that the boundaries are thus settled by this official delivery of possession, it appears from the law just quoted that these grantees are to be regarded as holders in good faith. Having taken actual possession, such possession would be presumed to continue, and under the laws of Mexico in ten years the grantees would by prescription have acquired title to the whole of the tract, even if all of it had not been originally sold to them. By the laws of Spain prescription for the period of ten years has the same effect as twenty years by the common law (*Mitchell vs. U. S.*, 9 Pet., 761). "A title with fixed boundaries, though containing more than the grants call for, may

be sustained by prescription against the sovereign" (Hall, section 56). The plan of Iguala and the treaty of Cordova provided that the junta should govern in conformity with the existing laws in everything not opposed to the plan of Iguala, which itself declared that the new government should be a moderate monarchy in substantial conformity to the Spanish constitution. The circular issued on the 25th of May, 1838, by the Minister of the Interior of the Mexican Nation and approved by the President (found in 3rd vol., Compiled Laws of Mexico, p. 557) provides the following exposition of the laws of Mexico:

"It must be principally noted that there are in force all such laws as are not openly inconsistent with the prevailing system, and unless they are found to have been expressly repealed by any other subsequent disposition, this rule also holding good in regard to those laws which were decreed (passed) in the very remote epochs and under the different forms of government which the nation has had, and that therefore the courts and other authorities daily transact their various duties under the existence of the laws of the Cortes of Spain, of the laws of Partidas and Compilation, as long as this disposition is not repugnant, more or less, to the form of government in which they were sanctioned."

There is nothing in the Spanish law of prescription inconsistent with the new form which the government assumed after the revolution, and as the law of prescription was never repealed in terms, or even by the remotest implication, it is submitted that it clearly remained in force after the revolution. It follows, therefore, that not only would a grantee acquire by prescription title to all the land within the metes and bounds of his grant, but also that a holder in good faith under a title emanating from the State of Sonora would in ten years acquire title to the land as against the General Mexican government. In this view of the case these grantees acquired vested rights long before the Santa Anna decree, and it is not claimed that even Santa Anna could by his edict go to the extent of divesting vested rights.

Mr Flipper, who testified for the Government in this case as in all the others, went over this grant "in a carriage" (Rec., p. 76); "had no tape or chain" (*ibid.*); "did not make any measurements" (*ibid.*); "estimated the distances" (Rec., p. 77); testifies "that is my estimate; I do not say that absolutely" (Rec., p. 78); was estimating the distance "by the distance the horses could go" (Rec., p. 80); his statements as to the map were on "his estimate" (Rec., p. 81).

Respectfully submitted.

ROCHESTER FORD,
Of Counsel for Appellant.